(3)

No. 90-839

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1990

COUNTY OF KERN, Petitioner,

v.

DAN ABSHIRE, et al., Respondents.

BRIEF OF THE COUNTY OF LOS ANGELES AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI BY THE COUNTY OF KERN

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The County of Los Angeles has petitioned for a writ of certiorari to your Court in County of Los Angeles v. Bratt, et al., U.S. Supreme Ct. No. 90-927 which raises issues similar to those raised by the County of Kern in this case.

Statement Under Rule 37.5

This amicus curiae brief is submitted on behalf of a political subdivision of the State of California by its authorized law officer. No consent of the parties to filing is required.

Interest of the County of Los Angeles

The County of Los Angeles is a political subdivision of the State of California. It provides a variety of local government services to approximately 8.6 million residents. For example, the County of Los Angeles gives medical and mental health care services for those who cannot otherwise obtain such services, provides police and fire protection to a large portion of our residents, and administers the local criminal justice system.

The County of Los Angeles has approximately 78,000 full time employees. An estimated 27,000 of these are classified as exempt from the time-and-one-half for overtime requirement of the federal Fair Labor Standards Act (the "FLSA"), 29 USC §207(a)(1), under the "white collar" exemptions authorized in 29 USC §213(a)(1). About 23,000 of these exemptions rest, in

part, upon the requirement that the individual employee be compensated on a salary basis. This portion of the exemption test is at issue in this case.

Under the decision of the Ninth Circuit all 23,000 exemptions are lost. For more than the past decade the compensation practices of the County of Los Angeles have not met the "salary basis" portion of the exemption test as determined by the Ninth Circuit.

The County of Los Angeles faces retrospective liability of as much as three years (statute of limitations for willful violations, 29 USC §255(a)). Conservative estimates of this liability are $170,000,000.00. This could be doubled if liquidated damages are awarded. 29 USC §216(b).

In addition the County of Los Angeles would be subject to an overtime compensation enforcement action by the federal Secretary of Labor as authorized in 29 USC §216(c), and injunctions from the federal district courts under 29 USC §217. Individual County managers may receive criminal fines or be imprisoned for willful violations of the FLSA. 29 USC §216(a).

In August, 1990 the State of California, because of lack of revenue, reduced its contributions to the County of Los Angeles by $137,000,000.00. These reductions included $81,800,000.00 for health services, $24,500,000.00 for mental health services, and $15,200,000.00 for our County trial courts.

The County of Los Angeles has closed a fire station and has commenced procedures to curtail health

services at eighteen health centers which serve the medically indigent, among others.

An additional loss of $17,000,000.00, more so a loss of $170,000,000.00, will require further reduction in essential local government services.

These losses, as well as criminal penalties, the enforcement powers of the federal Secretary of Labor, and the powers of injunction of the federal district courts, assure that the County of Los Angeles will change its compensation practices to meet the requirements of the exemption test as set out by the Ninth Circuit. The residents of Los Angeles County cannot afford the loss of 23,000 exemptions in the face of further reductions in essential services.

Argument

Direct federal regulation of local government overtime compensation practices is an unnecessary and unconstitutional exercise of the federal commerce power.

We urge your Court to grant the petition of the County of Kern and join in its request that Garcia v. San Antonio Metropolitan Transit Authority 469 U.S. 528 (1985) be overruled or limited. The large scale effects of the decision of the Ninth Circuit are set forth above.

Unrestrained Congressional exercise of the federal commerce power will devour state and local government sovereignty, if such governments are treated

as just another enterprise engaged in interstate commerce. There must be constitutional boundaries on this power based on principles of federalism or the Congress, using an unlimited federal commerce power, could draw up a state budget or mandate a quadrupling of the police force in the name of protection of interstate commerce. Maryland v. Wirtz 392 U.S. 183, 204-05 (J. Douglas dissenting) (1968), overruled National League of Cities v. Usery 426 U.S. 833 (1976), overruled Garcia v. San Antonio Metropolitan Transit Authority 469 U.S. 528 (1985).

The FLSA is a direct federal regulation of state and local governments as such. This case is not about the regulation of wages and hours of employees in private business. It is not about a conflict between state and federal law over the regulation of employee wages and hours in private businesses. It is about the propriety and necessity of use of the federal commerce power to directly structure employer-employee relations of state and local governments.

The FLSA is a wide ranging, pervasive, and unnecessary intrusion into the operations of state and local governments. The FLSA exemption requirements, as exemplified by the Ninth Circuit decision in this case, are broad reaching and detailed. They affect a general compensation policy of the County of Los Angeles; i.e., whether a large number of employees may lose salary for absences of less than a day.

This intrusive national regulation will cause a substantial reduction in local government services.

State law in California provides protection against the kind of public employer-employee disputes which present a danger of disrupting interstate commerce, the rationale for this particular application of the federal commerce power to the County of Kern and the County of Los Angeles.

The Meyers-Milias-Brown Act, West's Anno. Cal. Gov't. Code §§3500-3510, provides a collective bargaining system for California local governments under which public employees have the right to join organizations which will bargain with their employer on their behalf. The obligation to bargain imposed on public employers by this legislation is mandatory. The danger of a labor dispute disrupting interstate commerce is minimal.

Federal Congressional findings and policy supporting the exercise of the federal commerce power in the FLSA state that labor conditions below the minimum standard necessary for health, efficiency and well being of workers exist in industries engaged in commerce or in the production of goods for commerce. According to the federal Congress these conditions cause the spread of substandard labor conditions, burden the flow of goods in commerce, are unfair competition in commerce, lead to labor disputes burdening commerce, and interfere with the orderly and fair marketing of goods in commerce. 29 USC §202.

As local government entities the County of Kern and the County of Los Angeles operate in distinct local geographic areas performing government services. We are not private businesses directly engaged in interstate

commerce or in the production of goods for interstate commerce. We are not in competition with businesses or other government entities in other states for the performance of government services within our respective geographical boundaries. Our activities are not interstate and are not commercial.

It is the consumption of goods and services in interstate commerce and the fear that a public employer-employee dispute may interfere with such government consumerism that form the basis for application of the FLSA to state and local governments. Maryland v. Wirtz 392 U.S. 183, 194-95 (1968), overruled National League of Cities v. Usery 426 U.S. 833 (1976), overruled Garcia v. San Antonio Metropolitan Transit Authority 469 U.S. 528 (1985). This "interstate consumption" rationale is insupportable. The federal Congress could use this rationale to require that a state use granite from another state in the construction of a state house. The risk of a County employee labor dispute about overtime compensation impairing consumption of interstate goods and services is minimal since the State of California provides for mandatory collective bargaining between employees and California counties under the Meyers-Milias-Brown Act.

The mere existence of a hypothetical and tenuous rational basis for application of the FLSA to state and local governments cannot be sufficient to validate this exercise of the federal commerce power.

We ask that you grant this petition, support the integrity of state and local government sovereignty and return to the principles of National League of Cities v.

Usery 426 U.S. 833 (1976), overruled Garcia v. San Antonio Metropolitan Transit Authority 469 U.S. 528 (1985). As an alternative we ask that your Court grant this petition to consider what standards will serve both the interests of the federal government in regulating interstate commerce and the important role that state and local government sovereignty plays in our federal system.

Conclusion

For the foregoing reasons the petition of the County of Kern should be granted and a writ of certiorari should issue to the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

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